

Serial No. 09/7283051

- 17 -

Art Unit: 2141

REMARKS

Reconsideration and re-examination of the present application is respectfully requested in view of the above amendments and below remarks. Claims 1-4 are currently pending herein, claims 5-69 have been withdrawn.

Request for Withdrawal of Final Status of Amendment

M.P.E.P. §706.07(a) clearly states "...Under present practice, second or any subsequent actions on the merits shall be final, *except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims* nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)...."

The Examiner, in this application, has introduced a new ground of rejection, namely a rejection of claims 1 and 3 under 35 U.S.C. §102(e) over Rune. Previously, these claims were rejected under 35 U.S.C. §103(a). While Applicants did amend the claim in the previous office action, Applicants amendments served the effect of narrowing the claim, rather than broadening it. Thus Applicants amendments could in no way necessitate a broader scope of rejection than that previously placed on the claims.

In addition, M.P.E.P. §706 states:

"... While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application. But the applicant who dallies in the prosecution of his or her application, resorting to technical or other obvious subterfuges in order to keep the

Serial No. 09/7283051

- 18 -

Art Unit: 2141

application pending before the primary examiner, can no longer find a refuge in the rules to ward off a final rejection.

The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that *a clear issue between applicant and examiner should be developed, if possible*, before appeal. However, it is to the interest of the applicants as a class as well as to that of the public that prosecution of an application be confined to as few actions as is consistent with a thorough consideration of its merits..."

The M.P.E.P. further states:

"...However, where a single previous Office action contains a complete statement of a ground of rejection, the final rejection may refer to such a statement and also should include a rebuttal of any arguments raised in the applicant's reply. If appeal is taken in such a case, the examiner's answer should contain a complete statement of the examiner's position...."

Applicants understand that the Examiner has taken over handling of this application from Examiner Yussaf, and appreciates that the Examiner did not prepare the previous action. However, in the final rejection, the Examiner has failed to respond to any of Applicant's arguments put forth in the response of 10/14/2004. Because Applicants have not ability to address the Examiner's position with regard to the previous arguments, Applicants maintain that they have not received a full and fair hearing on this application; no clear issue has been define because the Applicants are unable to discern the Examiner's position with regard to their previous arguments. For at least the reasons that a new rejection has been improperly proffered, no response to Applicants arguments has been provided and Applicants have not yet had a full and fair review of the application, Applicants submit that the final status of the office action is erroneous, and prosecution should be allowed to continue to better prepare the Applicant for appeal, if necessary.

Rejections under 35 U.S.C. §102(e)

Serial No. 09/7283051

- 19 -

Art Unit: 2141

Claims 1 and 3 were rejected under 35 U.S.C. §102(e) as being anticipated by Rune et al. (U.S. Patent No. 6,304,913).

Rune

Rune describes a method and Internet system that attempts to improve response times by automatically selecting for use a server located relatively close to a requesting host. More specifically, the Internet system can operate to select the closest server or the most appropriate server from a plurality of servers providing the same service (e.g., mirror servers) or slightly adapted variants of the same service (e.g., alternative servers) each assigned a common host name and a unique Internet protocol address. The system operates to select the unique IP address assigned to either the closes server or the server that is most appropriate. (Rune Abstract). At column 3, lines 31-33, Rune states "the most appropriate alternative server will have the smallest hop count..." Rune also states that the most appropriate can be based on a 'class name of the requesting host...' (column 3, line 38).

Thus in essence Rune describes a system which uses mirrored web sites, and selects one of the mirrored web sites based on whether the web site is either closer, has a shorter hop count, or based on the class of the host name of the requesting host.

Claims 1&3:

Claim 1, in contrast, describes a system wherein a client selects a web site based on the optimal response time of a response to a client request to the web site. The present invention overcomes problems that are inherent in the systems of Rune, which are numerous and described on page 3 of Applicant's specification, and include that fact that web site assignment systems such as Rube do not incorporate factors including the availability and loading of the web site.

Serial No. 09/7283051

- 20 -

Art Unit: 2141

For example, Applicant's claim 1 recites "...a plurality of network appliances that optimize the performance of domains hosted on geographically distributed, mirrored network sites, a client computer coupled to said plurality of network appliances... and a network over which said network appliances and said client computer communicate, wherein, in response to a connection request by the client to a mirrored network site, each network appliance associated with each mirrored network site responds to the connection request to allow the client to connect to a mirrored network sites having an optimal response time to said connection request..."

The Examiner states that Rune teaches this limitation at column 1, lines 54-67 & column 2, lines 1-24, and col. 6, lines 1-58. Applicants disagree.

At issue is whether Rune teaches or suggests several elements of the claim, including the step of 'each mirrored network site responds to the connection request to allow the client to connect to a mirrored network site having an optimal response time to said connection request...' Applicant's disagree that this limitation is described or suggested in Rune.

In fact, in contrast to the claimed method of selecting one of the mirrored sites, Rune clearly teaches that the selection is based on which server is 'located relatively close to, or which is relatively appropriate for, a requesting host...' (col. 3, lines 20-25). Rune further states 'the most appropriate alternative server will have the smallest hop count...' (col. 3, lines 32-33). Rune further teaches one alternative method of selecting the appropriate mirrored site at col. 3, lines 34-49:

"... Alternatively, the selection of the closest alternative server 158b from the set of alternative servers 158b and 158e can be done using predefined instructions and a host name of the requesting host, where the predefined instructions determine a unique Internet Protocol address of the most appropriate alternative server based on a class of the host name of the requesting host (see FIGS. 12-13). In this case, the selected alternative server does not necessarily have to be the

Serial No. 09/7283051

- 21 -

Art Unit: 2141

necessarily have to be the closest. For example, the most appropriate alternative server for a requesting host with a host name ending with ".se" (the country code of Sweden) may be an alternative server using the Swedish language. A detailed description of how the selection of the closest alternative server occurs is deferred pending a discussion of the architecture of the Internet system 100..."

No mention or suggestion is found anywhere in Rune of the steps of the claimed invention.

The passages of Rune cited by the Examiner merely state the following:

Col. 1, lines 54-67 through col. 2 lines 24:

The cited passage is simply the Brief Description of the Invention, which describes:

"... The present invention is a method and Internet system that attempts to improve response times by automatically selecting for use a server (e.g., mirror server or alternative server) *located relatively close to a requesting host*. More specifically, the Internet system can operate to select the closest server from a plurality of servers providing the same service (e.g., mirror servers) or slightly adapted variants of the same service (e.g., alternative servers) each assigned a common host name and a unique Internet Protocol address. *The Internet system includes a database (e.g., Domain Name System (DNS) server) for storing the common host name and the plurality of unique Internet Protocol addresses*. The Internet system also includes a requesting host for transmitting a translation request containing the common host name to the database. *In response to the translation request, a system (e.g., requesting host, router, dedicated server, or DNS server) operates to select the unique Internet Protocol address assigned to the closest server (e.g., mirror server or alternative server) which is located the nearest to the requesting host*. ...In accordance with the present invention, there is provided a method and Internet system for automatically selecting a closest alternative server without requiring a user to manually enter an Internet Protocol address or manually select a hypertext link to connect with the closest alternative server. Also in accordance with the present invention, there is provided a method and Internet system for automatically selecting a closest alternative server from a plurality of alternative servers that include a source server and multiple mirror servers replicating the information of the source server and multiple distributed servers which provide the same service but may be slightly adapted for local service. Further in accordance with the present invention, there is provided a method and Internet system that automatically selects a closest alternative server in response to a changing location of a mobile user...."

Serial No. 09/7283051

- 22 -

Art Unit: 2141

There are several differences between Rune and the claimed invention. For example, in contrast to "...in response to a connection request by the client to a mirrored network site, *each network appliance* associated with each mirrored network site *responds to the connection request* to allow the client to connect to a mirrored network sites having an the optimal response time to said connection request..." as recited in claim 1, Rune selects a site based on a hop count associated with IP addresses, the hop count being received from a neighboring router.

The Examiner directs the Applicant to column 6, lines 1-58. However, this passage describes a mechanism by which "the requesting host ... receives all unique IP addresses ... associated with a transmitted host name..." "the requesting host ... transmits a second request including all the IP addresses to the closest router..." "the router ... determines a hop count for each IP address..." "the requesting host receives all the hop counts *from the local router*...and selects the alternative server ... having the smallest hop count..." Note a fundamental difference between the claimed invention and Rune; while a 'host' in Rune obtains information that is used in selecting a mirrored site from the closest router, in the claimed invention the 'client' receives responses 'from each mirrored site.' In Rune, the information stored in the routing table (hop count) does not reflect actual usage of resources at each of the mirrored sites.

Accordingly, for at least the reason that Rune fails to teach *every* of the limitations of claim 1, the rejection under 35 U.S.C. §102 is improper, and should be withdrawn. Claim 3 serves to add further patentable limitations to claim 1, but is allowable for at least the reasons put forth with regard to claim 1.

Serial No. 09/7283051

- 23 -

Art Unit: 2141

Rejections under 35 U.S.C. §103(a)

Claims 2 and 4 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rune et al. (U.S. Patent No. 6,304,913) in view of Biliris et al. (U.S. Application Publication No. 2002/0078233).

The Examiner states, at page 4 of the Office Action:

"... Rune does not explicitly teach wherein said network appliances communicate with each other through an authenticated protocol on top of a communications protocol. In the same field of endeavor, Biliris teaches a system and method wherein a network appliance communicates with each other through an authenticated protocol on top of a communications protocol, (See paragraph 15)... Therefore it would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention to incorporate the use of an authenticated protocol as taught by Biliris, into the distributed data system of Rune, for the purpose of balancing security and simplicity..."

Applicants respectfully disagree that the combination of Rune and Biliris describe or suggest the limitations of the claims for the following reasons. The inadequacies of Rune have been described above with regard to the rejection under §102.

Biliris

Biliris describes an architecture that advantageously leverages multiple content distribution networks to provide enhanced services. In Biliris, a share of content requests are served by each of a plurality of content distribution networks. (Biliris, abstract).

Biliris states in paragraph 003:

"... It is often advantageous when distributing digital content across a packet-switched network to divide the duty of answering content requests among a plurality of geographically dispersed servers. For example, extremely popular Web sites on the Internet often provide links to "mirror" sites which replicate the content at a number of locations across the globe, some closer to the particular client requesting the content. A more recent alternative to mirroring has been the use of what are referred to in the art as "content distribution" services. Content distribution services ... dynamically redirect content requests to a cache advantageously situated closer to the client issuing the request (such architectures are referred to herein generically as "content distribution networks" or CDNs for short..."

Serial No. 09/7283051

- 24 -

Art Unit: 2141

Thus, Biliris describes a content distribution service which selects the cache that is closest to the client, as 'an alternative to mirroring sites...'

With regard to directing clients to different CDNs, Biliris describes, at page 2, paragraphs 15 and 16, the use of redirection mechanisms including convoluted URLs and DNS outsourcing.

At paragraph 20, Biliris describes:

"... client requests for embedded content are directed first to C's CDN servers. At step 101, the client 110 resolves the host name portion of the URL using CDN C's DNS system 120 into one of C's CDN server farms 130. At step 102, the client 110 sends the HTTP request to a load-balancing switch in front of the chosen server farm. If content should be redirected to another CDN, the load balancing switch can redirect traffic to a special port number representing G on one of the caches...." Accordingly, Biliris teaches that client association with different CNSs is controlled by the load-balancing switch in front of a chosen server farm. Such an arrangement is different than that of the claimed invention.

Applicants claims 2 and 4 serve to narrow independent parent claim 1, which recites "...a plurality of network appliances that optimize the performance of domains hosted on geographically distributed, mirrored network sites, a client computer coupled to said plurality of network appliances... and a network over which said network appliances and said client computer communicate, wherein, *in response to a connection request by the client to a mirrored network site, each network appliance associated with each mirrored network site responds to the connection request to allow the client to connect to a mirrored network sites having an the optimal response time to said connection request...*"

Serial No. 09/7283051

- 25 -

Art Unit: 2141

Nothing in the combination of Biliris and Rube teach or suggest the limitations of the claims. Accordingly, for at least this reason, it is respectfully submitted that the rejection has been overcome and should be withdrawn.

Accordingly, review of this application and allowance of the claims, or at least withdrawal of the final status of the action is respectfully requested. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Lindsay G. McGuinness, Applicants' Attorney at 978-264-6664 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

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Date

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